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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

EDUARDO AMBRIZ AYALA,

Defendant and Appellant.

2d Crim. No. B171945
(Super. Ct. No. 2001026753)
(Ventura County)

Eduardo Ambriz Ayala was placed on felony probation after the trial court convicted him of felony drug offenses.¹ He contends the judgment must be reversed because the court permitted him to submit the case as a "slow plea," but did not fully advise him of the consequences of doing so. We reject the claim and affirm the judgment.

DISCUSSION

Appellant was stopped by police because the registration on his car had expired. During the stop, the officers noticed that he was trying to conceal a pill bottle. A search of the car revealed two bottles containing 3.27 grams of cocaine hydrochloride

¹ Appellant's probation was revoked a month after the initial sentencing hearing and a prison sentence of three years was imposed. The probation revocation proceeding is not before us in this appeal.

and .91 gram of cocaine base. After waiving his rights under *Miranda v. Arizona* (1966) 384 U.S. 436, appellant told police that he was just trying to support his family and had sold drugs the day before.

Appellant was charged with possessing cocaine base for sale, transporting cocaine and possessing cocaine for sale. (Health & Saf. Code, §§ 11351.5, 11352, subd. (a), 11351.) He waived his right to a jury trial and, after further advisements about the privilege against self-incrimination and the right to confront witnesses, agreed that the case could be submitted on the basis of the preliminary hearing transcript, the police reports, the lab report analyzing the drugs and a transcript of his interview by police officers. During closing argument, defense counsel urged the court to find appellant guilty of simple possession as a lesser included offense, arguing that there was no corpus delicti of the charged crimes apart from appellant's admissions. (See *People v. Alvarez* (2002) 27 Cal.4th 1161, 1165.) The court rejected this argument and found appellant guilty of all three offenses as charged.

DISCUSSION

A guilty plea is valid only when it is knowing, intelligent and voluntary, and a defendant who pleads guilty must be advised of and must waive the constitutional right to a jury trial, to confront witnesses and against self-incrimination. (*Boykin v. Alabama* (1969) 395 U.S. 238; *In re Tahl* (1969) 1 Cal.3d 122; see also *People v. Howard* (1992) 1 Cal.4th 1132, 1175-1176.) In *Bunnell v. Superior Court* (1975) 13 Cal.3d 592, 605, the court held that *Boykin-Tahl* waivers must also be obtained in a "slow plea" situation; i.e., when the defendant submits the case to the court on the basis of the preliminary hearing transcript without presenting additional evidence or a defense to the charges. A court taking a slow plea should also determine that the defendant understands the nature of the charges and the direct consequences of a conviction. (*Ibid.*)

A submission shall be deemed a slow plea only when it is "tantamount to a plea of guilty because guilt is apparent on the face of the transcripts and conviction is a foregone conclusion if no defense is offered." (*People v. Sanchez* (1995) 12 Cal.4th 1, 28.) "Submissions that are not considered slow pleas include those in which (1) the

preliminary hearing involves substantial cross-examination of the prosecution witnesses and the presentation of defense evidence or (2) the facts revealed at the preliminary examination are essentially undisputed but counsel makes an argument to the court as to the legal significance to be accorded them.'" (*Ibid.*; *People v. Wright* (1987) 43 Cal.3d 487, 496, abrogated on other grounds, as recognized in *People v. Mosby* (2004) 33 Cal.4th 353, 360.)

In this case, defense counsel extensively cross-examined the prosecution witnesses at the preliminary hearing and argued at the time of submission that the facts presented to the court would support a conviction of no greater a crime than simple possession. It is thus debatable whether the submission amounted to a slow plea of the charged offenses. (See *People v. Sanchez, supra*, 12 Cal.4th at pp. 29-30.) Assuming it was a slow plea, appellant acknowledges that the court made the necessary advisements and obtained the necessary waivers with respect to those offenses. He complains, however, that the submission also amounted to a slow plea to the uncharged crime of simple possession because his attorney conceded his guilt of that lesser included offense in the process of arguing for acquittal of the greater charged crimes. Appellant argues that the court was required to separately advise him of his *Boykin/Tahl* rights with respect to simple possession, and to ascertain that he understood the consequences of a conviction of that lesser offense.

Appellant cites no authority for the proposition that separate advisements and waivers are required for uncharged lesser included offenses that are supported by the transcript in a slow plea situation. Assuming that there are some cases in which a full advisement of the penal consequences will include a reference to the possibility of a conviction of a lesser offense, the failure to give such an advisement is of no consequence when the defendant is not ultimately convicted of that lesser offense. Appellant was convicted of the possession for sale and transportation counts after he made a knowing, intelligent and voluntary decision to submit those charges to the court on the basis of the preliminary hearing transcript and other documents. The lack of advisements regarding a

lesser crime, of which appellant was *not* convicted, does not affect the constitutional validity of the submission or the resulting convictions.

The judgment is affirmed.

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COFFEE, J.

We concur:

GILBERT, P.J.

YEGAN, J.

Roland N. Purnell, Judge
Superior Court County of Ventura

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Defendant and Appellant.

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